

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 110 OF 2014

Shri Chetan Singh Rathod ... Petitioner
Vs
1. The Commissioner of Customs & Anr. ... Respondents

WITH

WRIT PETITION NO. 111 OF 2014

M/s. Omax International ... Petitioner
Vs
1. The Commissioner of Customs & Anr. ... Respondents

Mr. R.R. Shah i/b M. Sachwani for the Petitioners.

Mr. Pradeep S. Jetly for the Respondents.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

MONDAY, 24TH AUGUST, 2015

P.C. :

1. Heard both sides. We have perused the order passed by the Tribunal which is impugned in these appeals.

2. Ordinarily, this Court would not have entertained a Writ Petition

for an order of this nature is appealable and in terms of the Customs Act, 1962, itself.

3. However, with the assistance of both counsel we have perused the impugned order. The Tribunal has insisted on every day's delay being explained which, in the given facts and circumstances, was not necessary. In one case, the delay occurred because of the petitioner-applicant being unwell and in the second case, it was because of the absence of the applicant from Mumbai. In both cases, the Tribunal should have realised that the petitioner-applicant is a sole proprietor. He had some difficulties and has genuinely pointed out as to how the appeal could not be filed in time. The delay was not deliberate or intentional, but for the illness and absence from Mumbai for some business work. In both cases, the petitioner cannot be said to be grossly negligent or his conduct lacking in bona fides. Therefore, an overall approach should have been taken and by imposing certain conditions, including paying of costs, the delay could have been condoned by the Tribunal.

4. Having reached this conclusion, we have no hesitation in holding that the orders passed by the Tribunal and impugned in these Writ Petitions suffer from non application of mind and the discretion is not exercised judiciously.

5. Therefore, we set aside both these impugned orders, allow the applications for condonation of delay, but impose costs on the petitioner quantified at Rs.5,000/- in each of these petitions, payable within two weeks from today. If these conditions are complied with and in time, then, the Tribunal to accept both the appeals, register them and decide them in accordance with law. If these conditions remain uncomplied, then, the Tribunal order should be taken to have not interfered with, but maintained and all consequences in law shall follow.

6. The petitions are allowed in these terms. We clarify that we are not inclined to grant any extension of time.

B.P. COLABAWALLA, J.

S.C. DHARMADHIKARI, J.